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## SENATE BILL No. 522

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 10-13-6; IC 33-37.

**Synopsis:** DNA testing of certain offenders. Adds residential entry and incest to the crimes for which an offender committed to the department of correction is required to submit a DNA sample. Requires an offender to submit a DNA sample if the offender is convicted of conspiracy to commit or an attempt to commit certain crimes. Provides that the use of DNA data erroneously added to the DNA data base does not invalidate a conviction. Establishes the DNA data base account. Appropriates money in the account. Requires a court to assess a \$30 DNA data base fee against a person convicted of certain crimes.

**Effective:** July 1, 2005.

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January 20, 2005, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## SENATE BILL No. 522

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure and to make an appropriation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 10-13-6-8 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) The  
3 superintendent may establish a data base of DNA identification records  
4 of:

- 5 (1) convicted criminals;
- 6 (2) crime scene specimens;
- 7 (3) unidentified missing persons; and
- 8 (4) close biological relatives of missing persons.

9 (b) The superintendent shall maintain the Indiana DNA data base.

10 (c) The superintendent may contract for services to perform DNA  
11 analysis of convicted offenders under section 10 of this chapter to assist  
12 federal, state, and local criminal justice and law enforcement agencies  
13 in the putative identification, detection, or exclusion of individuals who  
14 are subjects of an investigation or prosecution of a sex offense, a  
15 violent crime, or another crime in which biological evidence is  
16 recovered from the crime scene.

17 (d) The superintendent shall adopt rules under IC 4-22-2 necessary



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to administer and enforce the provisions and intent of this chapter.

(e) **The superintendent shall use funds in the DNA data base account established by section 23 of this chapter to defray the costs of operating the Indiana DNA data base. However, the absence of available funds in the DNA data base account does not affect the superintendent's obligation to operate and maintain the Indiana DNA data base.**

(f) **The detention, arrest, or conviction of a person based on a data base match or data base information is not invalidated if a court determines that the DNA sample was obtained or placed in the Indiana DNA data base by mistake.**

SECTION 2. IC 10-13-6-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) This section applies to the following:

(1) A person convicted of a felony under IC 35-42 (offenses against the person), IC 35-43-2-1 (burglary), **IC 35-43-2-1.5 (residential entry)**, or ~~IC 35-42-4-6 (child solicitation)~~; **IC 35-46-1-3 (incest):**

(A) after June 30, 1996, whether or not the person is sentenced to a term of imprisonment; ~~and~~ **or**

(B) before July 1, 1996, if the person is held in jail or prison on or after July 1, 1996.

(2) A person convicted of a criminal law in effect before October 1, 1977, that penalized an act substantially similar to a felony described in IC 35-42 or IC 35-43-2-1 or that would have been an included offense of a felony described in IC 35-42 or IC 35-43-2-1 if the felony had been in effect:

(A) after June 30, 1998, whether or not the person is sentenced to a term of imprisonment; ~~and~~ **or**

(B) before July 1, 1998, if the person is held in jail or prison on or after July 1, 1998.

**(3) A person convicted:**

(A) **after June 30, 2005, whether or not the person is sentenced to a term of imprisonment; or**

(B) **before July 1, 2005, if the person is held in jail or prison on or after July 1, 2005;**

**of attempt to commit or conspiracy to commit an offense described in subdivision (1) or (2).**

(b) A person described in subsection (a) shall provide a DNA sample to the:

(1) department of correction or the designee of the department of correction if the offender is committed to the department of

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correction; or

(2) county sheriff or the designee of the county sheriff if the offender is held in a county jail or other county penal facility, placed in a community corrections program (as defined in IC 35-38-2.6-2), or placed on probation.

A ~~convicted~~ person is not required to submit a blood sample if doing so would present a substantial and an unreasonable risk to the person's health.

SECTION 3. IC 10-13-6-23 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 23. (a) As used in this section, "account" refers to the DNA data base account established by subsection (b).**

**(b) The DNA data base account is established within the state general fund to receive funds to defray the costs of operating the Indiana DNA data base. The account shall be administered by the department.**

**(c) The expenses of administering the account shall be paid from money in the account.**

**(d) The treasurer of state shall invest the money in the account not currently needed to meet the obligations of the account in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the account.**

**(e) Money in the account at the end of a state fiscal year does not revert to the state general fund.**

**(f) Money in the account is continually appropriated to the department to carry out the purposes of this chapter.**

SECTION 4. IC 33-37-4-1, AS AMENDED BY P.L.85-2004, SECTION 16, AND AS AMENDED BY P.L.95-2004, SECTION 4, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 1. (a) For each action that results in a felony conviction under IC 35-50-2 or a misdemeanor conviction under IC 35-50-3, the clerk shall collect from the defendant a criminal costs fee of one hundred twenty dollars (\$120).**

**(b) In addition to the criminal costs fee collected under this section, the clerk shall collect from the defendant the following fees if they are required under IC 33-37-5:**

**(1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or IC 33-37-5-4).**

**(2) A marijuana eradication program fee (IC 33-37-5-7).**

**(3) An alcohol and drug services program user fee (IC 33-37-5-8(b)).**

**(4) A law enforcement continuing education program fee**

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(IC 33-37-5-8(c)).

(5) A drug abuse, prosecution, interdiction, and correction fee (IC 33-37-5-9).

(6) An alcohol and drug countermeasures fee (IC 33-37-5-10).

(7) A child abuse prevention fee (IC 33-37-5-12).

(8) A domestic violence prevention and treatment fee (IC 33-37-5-13).

(9) A highway work zone fee (IC 33-37-5-14).

(10) A deferred prosecution fee (IC 33-37-5-17).

(11) A document storage fee (IC 33-37-5-20).

(12) An automated record keeping fee (IC 33-37-5-21).

(13) A late payment fee (IC 33-37-5-22).

(14) A sexual assault victims assistance fee (IC 33-37-5-23).

*(15) A judicial administration fee under IC 33-37-5-21.2.*

~~(15)~~ **(16) A judicial insurance adjustment fee under IC 33-37-5-25.**

**(17) A DNA data base fee (IC 33-37-5-26).**

(c) Instead of the criminal costs fee prescribed by this section, the clerk shall collect a pretrial diversion program fee if an agreement between the prosecuting attorney and the accused person entered into under IC 33-39-1-8 requires payment of those fees by the accused person. The pretrial diversion program fee is:

(1) an initial user's fee of fifty dollars (\$50); and

(2) a monthly user's fee of ten dollars (\$10) for each month that the person remains in the pretrial diversion program.

(d) The clerk shall transfer to the county auditor or city or town fiscal officer the following fees, not later than thirty (30) days after the fees are collected:

(1) The pretrial diversion fee.

(2) The marijuana eradication program fee.

(3) The alcohol and drug services program user fee.

(4) The law enforcement continuing education program fee.

The auditor or fiscal officer shall deposit fees transferred under this subsection in the appropriate user fee fund established under IC 33-37-8.

(e) Unless otherwise directed by a court, if a clerk collects only part of a criminal costs fee from a defendant under this section, the clerk shall distribute the partial payment of the criminal costs fee as follows:

(1) The clerk shall apply the partial payment to general court costs.

(2) If there is money remaining after the partial payment is applied to general court costs under subdivision (1), the clerk

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shall distribute the remainder of the partial payment for deposit in the appropriate county user fee fund.

(3) If there is money remaining after distribution under subdivision (2), the clerk shall distribute the remainder of the partial payment for deposit in the state user fee fund.

(4) If there is money remaining after distribution under subdivision (3), the clerk shall distribute the remainder of the partial payment to any other applicable user fee fund.

(5) If there is money remaining after distribution under subdivision (4), the clerk shall apply the remainder of the partial payment to any outstanding fines owed by the defendant.

SECTION 5. IC 33-37-5-26 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 26. (a) This section applies to criminal actions.**

**(b) The court shall assess a DNA data base fee of thirty dollars (\$30) against an individual convicted of any of the following offenses after June 30, 2005:**

**(1) An offense under IC 35-42 (an offense against the person).**

**(2) Burglary (IC 35-43-2-1).**

**(3) Residential entry (IC 35-43-2-1.5).**

**(4) Incest (IC 35-46-1-3).**

**(5) An attempt to commit or a conspiracy to commit an offense described in subdivisions (1) through (4).**

SECTION 6. IC 33-37-7-2, AS AMENDED BY P.L.85-2004, SECTION 25, AND AS AMENDED BY P.L.95-2004, SECTION 13, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 2. (a)** The clerk of a circuit court shall distribute semiannually to the auditor of state as the state share for deposit in the state general fund seventy percent (70%) of the amount of fees collected under the following:

**(1) IC 33-37-4-1(a) (criminal costs fees).**

**(2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).**

**(3) IC 33-37-4-3(a) (juvenile costs fees).**

**(4) IC 33-37-4-4(a) (civil costs fees).**

**(5) IC 33-37-4-6(a)(1) (small claims costs fees).**

**(6) IC 33-37-4-7(a) (probate costs fees).**

**(7) IC 33-37-5-17 (deferred prosecution fees).**

**(b)** The clerk of a circuit court shall distribute semiannually to the auditor of state for deposit in the state user fee fund established in IC 33-37-9-2 the following:

**(1)** Twenty-five percent (25%) of the drug abuse, prosecution, interdiction, and correction fees collected under

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IC 33-37-4-1(b)(5).

(2) Twenty-five percent (25%) of the alcohol and drug countermeasures fees collected under IC 33-37-4-1(b)(6), IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).

(3) Fifty percent (50%) of the child abuse prevention fees collected under IC 33-37-4-1(b)(7).

(4) One hundred percent (100%) of the domestic violence prevention and treatment fees collected under IC 33-37-4-1(b)(8).

(5) One hundred percent (100%) of the highway work zone fees collected under IC 33-37-4-1(b)(9) and IC 33-37-4-2(b)(5).

(6) One hundred percent (100%) of the safe schools fee collected under IC 33-37-5-18.

(7) One hundred percent (100%) of the automated record keeping fee (IC 33-37-5-21).

(c) The clerk of a circuit court shall distribute monthly to the county auditor the following:

(1) Seventy-five percent (75%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-37-4-1(b)(5).

(2) Seventy-five percent (75%) of the alcohol and drug countermeasures fees collected under IC 33-37-4-1(b)(6), IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).

The county auditor shall deposit fees distributed by a clerk under this subsection into the county drug free community fund established under IC 5-2-11.

(d) The clerk of a circuit court shall distribute monthly to the county auditor fifty percent (50%) of the child abuse prevention fees collected under IC 33-37-4-1(b)(7). The county auditor shall deposit fees distributed by a clerk under this subsection into the county child advocacy fund established under IC 12-17-17.

(e) The clerk of a circuit court shall distribute monthly to the county auditor one hundred percent (100%) of the late payment fees collected under IC 33-37-5-22. The county auditor shall deposit fees distributed by a clerk under this subsection as follows:

(1) If directed to do so by an ordinance adopted by the county fiscal body, the county auditor shall deposit forty percent (40%) of the fees in the clerk's record perpetuation fund established under IC 33-37-5-2 and sixty percent (60%) of the fees in the county general fund.

(2) If the county fiscal body has not adopted an ordinance described in subdivision (1), the county auditor shall deposit all the fees in the county general fund.

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(f) The clerk of the circuit court shall distribute semiannually to the auditor of state for deposit in the sexual assault victims assistance fund established by IC 16-19-13-6 one hundred percent (100%) of the sexual assault victims assistance fees collected under IC 33-37-5-23.

(g) The clerk of a circuit court shall distribute monthly to the county auditor the following:

(1) One hundred percent (100%) of the support and maintenance fees for cases designated as non-Title IV-D child support cases in the Indiana support enforcement tracking system (ISETS) collected under IC 33-37-5-6.

(2) The percentage share of the support and maintenance fees for cases designated as IV-D child support cases in ISETS collected under IC 33-37-5-6 that is reimbursable to the county at the federal financial participation rate.

The county clerk shall distribute monthly to the office of the secretary of family and social services the percentage share of the support and maintenance fees for cases designated as Title IV-D child support cases in ISETS collected under IC 33-37-5-6 that is not reimbursable to the county at the applicable federal financial participation rate.

(h) The clerk of a circuit court shall distribute monthly to the county auditor one hundred percent (100%) of the small claims service fee under IC 33-37-4-6(a)(2) for deposit in the county general fund.

*(i) The clerk of a circuit court shall semiannually distribute to the auditor of state for deposit in the state general fund one hundred percent (100%) of the judicial administration fee collected under IC 33-37-5-21.2.*

*(j) The clerk of a circuit court shall semiannually distribute to the auditor of state for deposit in the judicial branch insurance adjustment account established by IC 33-38-5-8.2 one hundred percent (100%) of the judicial insurance adjustment fee collected under IC 33-37-5-25.*

~~(j)~~ This section applies after June 30, 2005.

**(k) The clerk of a circuit court shall monthly distribute to the auditor of state one hundred percent (100%) of the proceeds of the DNA data base fee imposed under IC 33-37-5-26 for deposit in the DNA data base account established by IC 10-13-6-23.**

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